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UNCLAS SECTION 01 OF 07 TASHKENT 000303

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DEPT FOR INL ANDREW BUHLER AND NORIS BALABANIAN; EUR/ACE
FOR DEAN FISCHER AND RICK STODDARD; SCA FOR PAMELA
SPRATLEN; SCA/CEN FOR BRIAN RORAFF AND RICHARD SNELSIRE
DEPT OF JUSTICE FOR OPDAT CATHERINE NEWCOMBE AND JOHN
TUNHEIM; ICITAP FOR MARK MOGLE
ASTANA FOR ALMATY/USAID

E.O. 12958: N/A

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SUBJECT: CONFERENCE ON HUMAN RIGHTS LETS WESTERN EXPERTS
ENGAGE UZBEKS ON BIG ISSUES

REF: TASHKENT 300

SENSITIVE BUT UNCLASSIFIED -- PLEASE PROTECT ACCORDINGLY

¶1. (SBU) Summary: The USAID-funded Open Dialogue Project, under the auspices of the Institute for New Democracies (IND) and the University of Eastern Kentucky, in conjunction with the state-supported Foundation for Regional Policy, sponsored an international conference in Tashkent on March 5-6 focusing on law enforcement and human rights issues. Despite some international criticism that the event was merely a talk shop, the conference was a chance for a wide range of American and European law enforcement and legal experts to engage a key group of Government of Uzbekistan officials on important issues. As expected, the Uzbek side highlighted major steps such as the abolition of the death penalty and the adoption of a law transferring arrest warrants from prosecutors to the courts. Nevertheless, officials from power ministries, the parliament, supreme court, and academic organizations listened intently as a U.S. Federal Judge analyzed the strengths and weaknesses of the new habeas corpus law. Uzbek police officials also heard relevant case studies about forensic examinations, community policing techniques, and conflict avoidance.

¶2. (SBU) The Uzbeks acknowledged a need to focus on how to better balance security priorities with respect for human rights. However, they made it clear that Andijon is not yet open for public discussion. Nonetheless, a conference tackling this type of subject matter would not have been possible even last summer, and we are hopeful it will be a useful building block for additional cooperation on legal reform and human rights. The Government of Uzbekistan has

already asked Open Dialogue to lead a small working group to review the Government of Uzbekistan's laws on torture and make any recommendations to ensure compliance with the Geneva Convention. We believe that the "talking heads" have an important role in an intensified dialogue that could lead to important developments in our relationship. End summary.

Let's Steal Ideas

13. (U) The USAID-funded Open Dialogue Project, in partnership with the Institute for New Democracies (IND) and the University of Eastern Kentucky, in conjunction with the state-supported Foundation for Regional Policy, sponsored an international conference in Tashkent on March 5-6. The title of the conference was "Death Penalty Abolition and Transfer of Arrest Warrants to Courts -- An Important Stage in Liberalizing the Judicial System." The title reflects the Government of Uzbekistan's desire to highlight these significant new laws to an international audience, and the conference also included sessions on police techniques and forensic pathology. (Interestingly, the organizers had amended the title of the conference to "Law Enforcement, Human Rights, and Global Security: Uzbekistan and the World Experience." When it turned out that President Karimov had already approved the other title, the organizers preserved the new name by labeling the whole week's proceedings the "Uzbek - America Forum: Law Enforcement, Human Rights, and Global Security" but left Karimov's decision for the two-day conference intact.) One of the American sponsors characterized the conference as "a chance to 'steal' good ideas from each other." The Uzbek participants emphasized a

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theme of striving for balance between maintaining state security and respecting human rights. There were also two days of side programs that preceded the main events as well as a trip to Bukhara after the conference for the visiting experts to meet with local level law enforcement officials. The event was well-attended by the diplomatic corps and covered in the local media.

No Shock Therapy

14. (U) The Uzbek participants generally stuck to their commonly stated theme of "step by step" progress on reform. The Chair of the Supreme Court Buritosh Mustafaev underscored that Uzbekistan decided early after its independence not to undergo "shock therapy," electing instead to gradually introduce changes. On reforms, the Director of the Foundation of Regional Policy Sayfiddin Juraev, the main conference organizer on the Uzbek side, noted that "we're on the right path and there is no chance we'll move away from it." While the conference focused on the two recent major reforms, Deputy Minister of Internal Affairs Alisher Sharafutdinov also reminded the audience that Uzbekistan has undertaken a significant liberalization of its criminal justice system characterized by more lenient prison sentences. He said 4,000 inmates were released prior to the end of their sentences and yet crime is down along with recidivism; hundreds of fugitives have even appeared voluntarily to settle cases because the liberalization of the laws allow civil resolution (without intervention of the judicial system) of a dispute. Sharafutdinov concluded, however, that "nonetheless, we need to improve" and promised to try to resolve outstanding issues.

15. (SBU) Sayora Rashidova, the Parliament's Human Rights Ombudsman, said that in 2007 the number of complaints registered in her office grew to 7,367, which in her view demonstrates that Uzbek citizens "are becoming more informed about their rights" and increasing their expectations. The number of complaints directed at law enforcement comprised 22 percent of the total, which she asserted was a decrease stemming from improved performance of law enforcement bodies

in respecting rights. Sharafutdinov added that the Ministry of Internal Affairs (MVD) uses the Human Rights Ombudsman's data not as criticism but rather "as a barometer" of the situation in the country. The Chairman of the Commission for the Prevention of Corruption in Slovenia Drago Kos gave credit where credit is due, noting the significance of reforms abolishing the death penalty and transferring detention authority to the courts.

Abolition of the Death Penalty

16. (SBU) Mustafaev noted that, from the Soviet legacy, the death penalty used to be on the books for 33 different crimes. Gradually legal reforms were introduced, and by 1994 it was applicable to 13 crimes; by 1998 there were eight; then four as of 2001; the figure dropped to two in 2003; and now capital punishment is abolished. He and Mirzayusuf Rustambaev, the influential Rector of the Tashkent State Institute of Law, mentioned that they carefully studied international models, especially Germany, and participated in many seminars on the topic. He specifically thanked the head of the USAID-funded Open Dialogue Project Mjusa Sever for her

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efforts to help Uzbekistan learn from abroad. (Comment: This suggests that forums to expose Uzbek officials to different ideas and models can pay off with long-range reforms. End comment.) Rustambaev could not resist gushing that "we are evolving in such a short period of time, and are even ahead of some big democratic countries" (which he did not name). "We would like well-known democratic countries to learn from us; don't be shy," he continued, "and maybe we'll learn from you, too." Rustambaev also stated that, in addition to abolishing the death penalty, in Uzbekistan there are only two crimes even punishable by life in prison, fewer than any other country in the Commonwealth of Independent States (CIS). Furqat Shodmonov, Chair of Higher Training Courses at the Prosecutor General, pointed out that abolishing the death penalty also means that "judicial errors can be corrected."

Habeas Corpus-type Law

17. (SBU) Sharafutdinov described a new law (which went into effect in 2008) transferring authority to issue arrest warrants from prosecutors to the courts as one that "significantly changed the legal system" and brings Uzbekistan "into compliance with international norms." He said that so far in 2008 there has been a 40% drop in requests for arrest warrants and, while it is too early to speculate, he is confident that "by the end of year the number of those arrested should be substantially less than in previous years." He noted the transfer of authority requires prosecutors to be more thorough and also "activizes the role of defense lawyers." In a significant statement for an Uzbek official, Sharafutdinov also said "we acknowledge that the previous system led to abuse and violations of human rights."

He added that "this law helps us in reaching a balance and, while the transition is a challenge, this is a major step." Chair of the Supreme Court Mustafaev noted that the law is working and that, in addition to fewer requests for warrants, some requests are being denied. Umida Tukhtasheva, a professor and Chair of the Tashkent State Institute of Law who helped draft the legislation, agreed that the law will reduce ungrounded arrests and said that already one percent are being struck down.

18. (SBU) In preparation for implementing the law as of 2008 Sharafutdinov said the Government of Uzbekistan has organized workshops to increase awareness among judges. He also said that his ministry now has a policy to distribute leaflets to arrested persons informing them of their rights. A new system of 24-hour on-call defense attorneys has also been established to improve access to defense counsel for the

accused. He says there are also efforts to inform families and lawyers of detentions to provide better opportunities for defendants to organize a defense. The Ministry of Internal Affairs has also instituted random inspections of its law enforcement personnel to check their conduct. He also noted increased cooperation with the Human Rights Ombudsman and called for an expansion of an existing Inter-Agency Working Group on Human Rights, which would include inviting international experts to offer advice. (Note: Sharafutdinov said he submitted this proposal to the Uzbek Ministry of Justice, thereby publicly putting the ball in its court. This could mean that the Ministry of Justice is already preparing a response and is comfortable with the idea. End note). Sharafutdinov, again with encouraging candor, closed

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by noting: "No one will forgive us if we miss this opportunity. We are halfway there but still have a lot of work to do. However, give us a year or two and we will deliver better results."

Expert Analysis

¶9. (SBU) A U.S. Federal Judge who participated in the conference agreed that the new habeas corpus-type law is a major step toward compliance with the International Covenant on Civil and Political Rights (ICCPR) and should be commended. However, he told the rapt audience of Uzbek movers and shakers that the law falls short on pre-trial detention procedures and some implementation issues. The judge noted it is a good sign that early data shows Uzbek judges are indeed rejecting some warrants, so "the proof is in the pudding." While arrest warrant procedures in the new law seem to be working well, he emphasized that it is not clear whether standards are being applied, which could lead to arbitrary decisions by judges.

¶10. (SBU) The judge pointed out that the pre-trial detention procedures are not working very well, and advised Uzbek courts to consider flight risk and community safety rather than just the severity of an alleged crime. Again, he stressed the importance of developing clear standards. The judge also described a loophole in the law that could allow law enforcement officers to delay starting the clock on official detention by not formally arresting a person right away. Furthermore, while 72 hours is the maximum detention period upon arrest that could be justified under international norms, the Uzbek law has some provisions to allow for an additional 48 hours or even 10 days in exigent circumstances. He also said it is important to consider whether there is actually access to counsel in practice, not just the right to counsel. Another problem area in the new law is that the decision to order pre-trial detention is made in a closed hearing, whereas such an important decision should be made publicly and with a more effective way for defense to participate. The judge suggested establishing a probation department that gives advice to judges on weighing pre-trial detention decisions. Overall, the judge observed that a few more steps are necessary to meet international standards but told Sharafutdinov that they have come two-thirds of the way rather than just halfway. (Comment: Many diplomats in the audience appreciated that the judge delicately cut to the chase and pointed out specific areas for improvement. Ives Giovannoni of the International Committee for the Red Cross told poloff that "the judge's remarks are absolutely crucial to the work our organization is trying to do here." The successful presentation could not have been possible without the assistance of the Department of Justice's Office of Prosecutorial Development and Assistance Training (OPDAT), which conducted an important assessment of the new law in preparation for the judge's participation in the conference. The in-depth analysis will be an important building block as we follow up with specific legal reform efforts. End comment.)

¶11. (SBU) The U.S. judge's frank commentary drew an impassioned response from Uzbek participants who were clearly not used to being second-guessed. Tukhtasheva, a bright young legal scholar, rebutted with several counterpoints to defend the law and drew an analogy to a young sapling that

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must be nurtured and watered to grow into a strong tree. She said that hearings are closed because they are not meant for public consumption and that authorities cannot do investigations overnight. Shodmonov re-emphasized the forward progress the law represented. Sharafutdinov, with equanimity, conceded that "yes, we have problems with the new law" and expressed his appreciation to the judge for reviewing it. Sharafutdinov and Tukhtasheva met with the judge separately for two hours on the margins to review his findings in detail on a working level, which seemed to reflect the willingness of the Government of Uzbekistan to work with the U.S. on legal reform issues (septel).

Andijon is Not On the Table

¶12. (SBU) The Uzbek participants were the first to mention the 2005 Andijon events during the conference, and the consistent message was that the Government of Uzbekistan was justified in its crackdown. Senator Mavjuda Radjabova, the Chair of the Senate Committee on Legislation and Judicial-Legal Issues, stated that the Andijon incidents were "acts of international terrorism." She added: "We conducted an open trial to investigate and prosecute those responsible and it was proven they were involved in terror acts. These events are a parallel to the September 11, 2001 attacks in the United States. All nations have different definitions and approaches to terrorism, and we need to stand up to encroachments on our Constitution." Rustambaev, whom many Uzbek attendees regarded as the driving force behind the featured legal reforms, defensively noted that "many nations accused us of violating human rights and it is simply untrue. Terrorists were trained abroad and made incursions onto Uzbek territory. We had to protect ourselves."

¶13. (SBU) Nonetheless, in a keynote address the Ambassador reiterated the international community's request for an independent inquiry into Andijon. Juraev, in his remarks, thanked the Ambassador but said the Government of Uzbekistan has already unilaterally addressed the Andijon issue and it is finished. Juraev then nervously approached poloff and said "the Ambassador's speech was great, but please take out the Andijon part before you post it to the Embassy website." (Comment: The high-level Uzbek participants at the conference reinforced the message that they are willing to admit some shortcomings and previous problems in the legal system, but they are firm that an open investigation into Andijon is off-limits. The Uzbeks hope the West will accept the specific openings to further engage on some substantive issues but drop the demand for Andijon inquiries once and for all. End comment.)

Policing Techniques

¶14. (SBU) While Uzbek officials insist on avoiding critical discussions about Andijon, the conference provided a valuable opportunity for police officials from the West to share relevant experiences with the Uzbeks that could help hone the necessary skills to respond appropriately to crisis situations and avoid facing what one police official called the stark choice of having to open fire or run away. A senior police official from Arizona shared strategies for coordinating security for the Super Bowl, which could help Uzbek law enforcement make adequate preparations for

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high-profile, crowded events. He described the approach to managing a major Ku Klux Klan rally in Louisville, Kentucky, including the challenge of defending free speech even if it is hateful, and the need to seal off counter-demonstrations. He also discussed how American police forces have to establish trust with immigrant communities, which include many illegal residents who fear authorities. These lessons also are applicable in Uzbekistan, which has substantial minorities from other ethnic groups throughout the country.

¶15. (SBU) Stephen White, an EU police official from Northern Ireland, shared tough lessons learned on conflict avoidance and crowd management from his experiences dealing with violence during the annual marching season, particularly at Drumcree. He advised the attendees "to remember the community impression police make, especially in the heat of battle. The use of force is an important decision and events have to be viewed in a wide sense." (Comment: After the Uzbek authorities at the conference bristled about Andijon, it was especially useful to have Western police experts with experience in the trenches demonstrate that they face similar dilemmas as the self-conscious MVD officials. Rather than the appearance of talking down to the Uzbeks, this allowed for a productive exchange. NSS was not officially represented at the conference but did participate in the two-day side programs with the visiting experts. End comment.)

Forensics is Key

¶16. (SBU) One of the most productive sessions of the conference was "Forensic Investigations' Role in Liberalizing the Criminal Justice System," which was more technical and less politicized, which allowed for a less guarded exchange. Kos, the Slovenian official, emphasized that "if you do forensics right, you don't need to rely on oral witnesses." Zayniddin Giyazov, Head of the Uzbek Central Bureau of Forensic Pathology Examination, noted that Uzbekistan has seen a 50 percent increase in use of forensic data in criminal cases. He impressed the Western experts in attendance by stressing the importance of "objectivity, independence, and competence." However, he conceded that "capacity is still undertapped to implement sound forensic work and we're far from perfect." He mentioned that issues are gradually being addressed, but called for enhanced cooperation, especially since the pool of forensic pathologists is very small in every country (amounting to less than 0.5 percent of medical doctors in Uzbekistan).

¶17. (SBU) A visiting county medical examiner from New Jersey said professional standards are excellent in Uzbekistan, but staff just lack the proper equipment. The American cited a case in Navoi Province in which international experts exonerated the government in the alleged torture death of a deceased prison inmate because the Uzbek autopsy was properly conducted and documented. He underscored that "absolute independence is critical to credibility," and he successfully defended this position when challenged by an Uzbek official who suggested that medical examiners' opinions "can be deficient." He advised his Uzbek colleagues to obtain a second opinion for trials rather than try to discredit professionals or subject their results to law enforcement pressure. (Comment: USAID funding has already facilitated multiple trips by forensic pathology experts to Uzbekistan.

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INL is also currently funding a project to upgrade a forensic laboratory that focuses on narcotics analysis. The positive discussions at this conference may pave the way for additional opportunities to provide equipment upgrades and related legal training focusing on forensic pathology. End comment.)

Comment

¶18. (SBU) Former British Ambassador to Uzbekistan Craig Murray, who has gained international media recognition for his recent book about Uzbekistan, criticized from afar this conference as a gathering of "talking heads." (His remarks were picked up by the website ozodlik.org.) However, as with previous events sponsored by the few USG-supported NGOs in Uzbekistan, the conference provided an important opportunity for Western law enforcement experts to share ideas, advice, and experiences with an important group of Uzbek officials which needs exposure to outside viewpoints.

¶19. (SBU) Reforms may happen slowly in Uzbekistan, where there remains a penchant to do things from the top-down, but this conference underscored the fact they do sometimes happen. The two key legal reforms discussed in detail at this conference were made possible in large part by the previous work of U.S.-supported entities. Sustained engagement now may likewise lead to desired further reforms, especially of the recent habeas corpus law. The sensitive topics included on this agenda could not have been discussed just one year ago, and the Government of Uzbekistan has already asked Open Dialogue to organize a roundtable addressing torture as quickly as possible. We believe the talking heads have some important things to say and the talk is not in vain. The conference recommendations have been circulated to Government of Uzbekistan ministries with a response time of one week. The Ambassador told the closing plenary that implementation is key. Quoting an Uzbekistan human rights lawyer, the Ambassador emphasized the importance of progress on the ground in order to avoid the lyrical conclusion about legal reform: "you can see it, but you can't eat it."

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